IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24971 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDIAN OIL CORPORATION LTD. - Petitioner
Versus
S.N. PATEL. - Respondent

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Appearance :

MR MANISH R BHATT for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR PARTHIV B SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 06/02/2007

ORAL JUDGMENT

1. Rule. Mr. P.B. Shah, learned advocate waives service of Rule on behalf of the

respondent.

2. Indian Oil Corporation, the petitioner (hereinafter referred to as "Corporation") has filed this petition under Article 227 of the Constitution of India with a prayer that this Court may be pleased to issue a writ of certiorari or any other appropriate writ, direction or order quashing and set aside the order dated 25.7.2006 passed by the learned 6th Additional Senior Civil Judge, Vadodara below Exhibit 16 in Special Summary Suit No.702 of 2003 and be further pleased to allow the summons for judgment filed by the petitioner. The petition was filed on 25.1.2006. This Court has passed the orders on 4.12.2006 and 17.1.2007. The respondent has filed affidavit-in-reply on page 109. The original petitioner has further filed affidavit-in-rejoinder on 27.1.2007 and the respondent has filed further affidavit on 6.2.2006 and annexed certain documents, for which, the learned advocate Mr.M.R.Bhatt for the petitioner objected because such documents were not considered before

the learned Trial Court.

3. I have heard Mr.M.R. Bhatt and Mrs. Bhatt, learned advocates for the petitioner.

4. The facts narrated to this petition as under:

4.1 The respondent was appointed as a officer in the Department of the petitioner Corporation.

4.2 During the course of employment, the petitioner has issued a charge sheet vide order dated 12.10.2002 against the respondent for submission of false caste certificate and also charged by such order for misappropriating of financial assets of the petitioner Corporation. In view of this, the Inquiry Officer was appointed and the Inquiry Officer has made detailed report on 25.5.2001. The said charge sheet is produced at pages No.11 to 46. Thereafter, the Chief Human Resource Manager of the Corporation on 25.4.2003 was pleased to pass

an order for punishment of dismissal of the respondent with immediate effect under Clause 23(I)(e) of the Certified Standing Orders. When the Inquiry Officer came to the conclusion that as per certified standing order and as per the charges, the act of defendant (respondent herein) for misappropriating the funds and assets of the Corporation under clause 22(iv) of Standing Orders of the Corporation have been proved.

4.2.A **Clause 22 (iv)** of Standing Orders reads as under :

> "Theft, fraud or dishonestly in connection with the Company's business or property."

4.2.B The Chief Finance Manager & Enquiry Officer after hearing, declared the respondent in his conclusion held as under :

> **CONCLUSION** :
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> "On perusal of witnesses, examination, cross-examinations, evidences led, depositions made and various documents produced as Exhibits and on analysis of

charges as mentioned in the foregoing paragraphs, there is no fetter of doubt in my mind that the CSE's acts as per the charge sheet amounts to fraud and dishonesty in the connection with the company's property, which amounts to misconduct under clause 22 (iv) of Certified Orders of the company, stands proved."

4.2.C The Chief Human Resource Manager by his order dated 25.4.2003 held as under:

"Upon careful consideration of the Enquiry report, the evidences and material on record, I agree with the findings of the Enquiry Officer.

Such act of misconduct on part of employees are serious in nature, as the employee has fraudulently misappropriated the financial assets/property of the Corporation. I am therefore, constrained to award Shri S.N. Patel, Emp. No.56521, the punishment of dismissal from service, with immediate effect as per Clause 23 (I) (e) of the Certified Standing

Orders of the Company.

Shri S.N. Patel is advised to collect his dues from Finance Department after obtaining necessary clearance certificate."

4.2.D Clause 23 (e) provides dismissal without notice.

23.I. **PENALTIES FOR MISCONDUCT** :
"The following penalties may be imposed on any employee who is found guilty of misconduct, or for other good and sufficient reasons.

(e) Dismissal without notice."

4.3 Thereafter, the petitioner, Corporation has addressed a letter dated 25.6.2003 to the respondent that the respondent has to make the payment of Rs.6,56,000/- in view of the misappropriation of the financial assets of the Corporation within 15 days from the date of this order, which is on page 51.

4.5 As the respondent did not remit the amount, the petitioner filed Special Summary Suit No.702 of 2003 before the learned Civil Judge (S.D.), Vadodara under Article 37 under the Code of Civil Procedure for claiming the amount of Rs.6.56 Lakhs the suit amount goes to total Rs.10,06,424.39.

4.6 Thereafter, the plaintiff has filed affidavit and taken out Summons for Judgment of one Mr.Arunkumar dated 17.9.2005 before the learned trial Court. In that, the respondent filed application for leave to defend before the learned trial Court.

4.7 Thereafter, the learned Civil Judge has passed an order on 25.7.2006 below Exhibit 16 directed defend to leave to the defendant unconditionally.

4.8 Being aggrieved and dissatisfied with the said order, the Corporation has filed this

petition before this Court. It is the case of the petitioner – Corporation that the learned trial Judge without proper examining the facts of case held that the suit has been filed for act of misappropriation made by the respondent, defendant. The learned trial Judge has completely overlooked that the Inquiry Officer had found that the respondent had misappropriated the amount and how such findings of the Inquiry Officer is invalid, is not appreciated by the learned trial Judge.

5. In view of the all these disputes facts and affidavits, it will be proper that the learned Court passed an order without adjudicating the matter.

5.A It is no doubt true that the original suit was filed for recovery of Rs.10,06,424.39. out them, the amount payable to the respondent is as under :

Heads	Amount Rs.
1. GSLI	700.00
2. SABF	4679.00
3. HBA Principal	1846618.03
4. HBA Interest	154400.00
5. Conc. Adv. Interest	810.36
6. Furniture Adv.	1810.00
7. HBA redemption	2407.00
8. LPG Cylinder Dep.	1000.00
9. Amt. Recoverable	656000.00
Total	1006424.39

The total amount payable to Shri S.N. Patel is as under :

1. LTS arrears	14894.00
2. I Tax Refund	3342.00
3. Lease Rent Arrears	93933.00
4. PLI 2001-02	2480.00
5. PLB 2001-02	12530.00
Total	261225.00

So, Rs.1006424.39
Rs. 261225.00
_____
Rs. 745199.00

5.1 The amount of Rs.6,56,000/-, which is to be recovered by the Corporation in connection with the fraud committed by the respondent. So if we deduct the amount of Rs.6,56,000/- then the amount of Rs.89,199/-, the Corporation has to recover from the respondent.

5.2 The learned advocate for the petitioners states that when the learned trial judge passed an order to permit to defend the defendants unconditionally. The learned trial Judge has not taken into consideration the fact that out of disputed amount, at least there is an amount of Rs.89,199/-, which the Corporation has to recover.

5.3 The learned trial Judge has not considered what amount is claimed by Corporation and thereafter, whether the defendants have stated in their defence and whether the said defence is bonafide, real or even bogus before passing the order. In respect of the same, the learned advocate for the petitioner has relied upon the following decisions :

5.4 The learned advocate for the petitioner has relied upon the judgments in the case of **Santosh Kumar Vs. Mool Singh (1958) SCR 1211** decided by the Hon'ble Apex Court and in the case of **Michalec Engineering & Mfg. Vs. Basic**

Equipment Corporation, AIR 1977 SCC 577 decided by the Hon'ble Apex Court as well as the judgment of this Court (Coram : K.M. Mehta, J.) in the case of **The New India Assurance Company Ltd. Vs. The State Trading Corporation of India Ltd., MANU/GJ/0001/2007, 37** decided on 1.12.2006

5.5 The learned advocate has stated that the learned trial Judge has not considered all these decisions and principle laid down in this behalf before passing the said order.

5.6 It may be noted that the Corporation has dismissed the respondent from the service on 25.4.2003 pursuant to the aforesaid order of the inquiry.

5.7 Being aggrieved and dissatisfied with the said order, the respondent filed Regular Civil Suit No.319 of 2006 on 18.4.2006. The learned advocate for the petitioner submitted that when the order of dismissal passed on 25.4.2003 and just after completing three years i.e. 8.4.2006,

the respondent filed Civil Suit No.319 of 2006 challenging the said order and the said suit has been filed after unreasonable delay and it also appears that the action of the respondent is clearly after thought.

6. On the other hand, Mr. P.B. Shah, learned advocate has stated that it is no doubt true that there is no dispute that the petitioner has to recover Rs.89,1999/- from the respondent as the Corporation has given to him by way of loan.

7. As regards other aspects, the respondents filed affidavit-in-reply.

8. Against that, the petitioner has filed affidavit-in-rejoinder and the respondents have filed further affidavit in this behalf.

9. In view of the same, without deciding the merits of the matter, the following directions are passed in the interest of justice :

(1) The learned trial Judge is requested to hear and dispose of finally the Summary Suit No.702 of 2003 along with Summons for Judgment and leave the defendants, which has been filed by the parties in accordance with law. The learned trial Judge will also consider the averments made by the petitioner and respondents in affidavit-in-reply, affidavit-in-rejoinder and thereafter, the respondents filed further affidavit and other documents.

(2) The learned trial Judge will consider the principle of Order 37 of Code of Civil Procedure as well as decisions cited above and the facts set out in the order also.

(3) It may be noted that along with the said suit, the learned advocate may also if time permits, consider the Special Summary Suit No.702 of 2003. The learned trial Judge is also requested to dispose of expeditiously as possible preferably on **31.7.2007**.

10. In view of the same, the petition is

disposed. Rule made absolutely to the aforesaid extent.

(K.M. MEHTA, J.)

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